

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 1636 OF 2018

- 1] Babasaheb S/o Asaram Rawade,
Age- 54, Occu-Labour,
- 2] Sopan S/o Babasaheb Rawade,
Age- 26, Occu-Labour,
- 3] Namdeo S/o Asaram Rawade,
Age- 40, Occu-Labour,
- 4] Ramdas S/o Asaram Rawade,
Age- 35, Occu-Labour,
- 5] Tanaji S/o Asaram Rawade,
Age- 45, Occu-Labour,
- 6] Kishor S/o Tanaji Rawade,
Age- 22, Occu-Labour,
- 7] Prashant S/o Namdeo Rawade,
Age- 14, Occu-Labour,
- 8] Adinath S/o Ramdas Rawade,
Age- 17, Occu-Labour,
- 9] Manda W/o Ramdas Rawade,
Age- 32, Occu-Household,
- 10] Alka W/o Babasaheb Rawade,
Age- 45, Occu-Household,
- 11] Sindhu W/o Tanaji Rawade,
Age- 40, Occu-Household,
- 12] Nandabai W/o Namdeo Rawade,
Age- 40, Occu-Household,

- 13] Yogita D/o Sopan Rawade,
Age- 23, Occu-Household,
- 14] Puja D/o Ramdas Rawade,
Age- 14, Occu-Education,
- 15] Ashwini D/o Ramdas Rawade,
Age- 17, Occu-Education,
- 16] Varsha D/o Ramdas Rawade,
Age- 19, Occu-Education,

All R/o- Kangoni, Tq.- Newasa,
Dist.- Ahmednagar.

... APPLICANTS

VERSUS

- 1] The State of Maharashtra,
For Kotwali Police Station, Ahmednagar,
Tq.- & Dist.- Ahmednagar.
- 2] Prashant S/o Ramrao Shirke,
Age- 32 years, Occu- Service,
(Deputy Chief Executive Officer
(Grampanchayat) Business,
R/o. Zilla Parishad Quarter, Laltaki,
In front of Swatha Hospital Ahmednagar,
Tq. & Dist. - Ahmednagar.

... RESPONDENTS

(Resp. No.2 is Orig. Complainant)

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Mr. Amol S. Gandhi, Advocate for Applicants.
Mr. R. V. Dasalkar, APP for Respondent No.1 / State.
Mr. Avinash D. Aghav, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 04th September, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2 The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of FIR No.97 of 2018, registered with Kotwali Police Station, District Ahmednagar, for the offences punishable under Sections 353 and 188 read with 34 of the Indian Penal Code and Sections 116, 117 and 120 of the Maharashtra Police Act.

3 FIR is given by the Deputy Chief Executive Officer, Zilla Parishad, Ahmednagar. He has made allegations that in the incident dated 8th March, 2018, present Applicants obstructed him and other public servants in discharging their duties and Applicants had said that they would not allow them to work unless their demands were accepted and met with. It appears that action was taken to pull down the illegal construction of toilet constructed by the Applicants. The toilet was constructed on public way. It is the contention of the Applicants that they had made construction on house property Nos.65

and 66 and it was not encroachment on public way. Allegations are made against the Applicants that they were asking to give Rs.2,00,000/- to each of the Applicants and to withdraw the case already filed against them.

4 In view of the nature of allegations, this Court had asked the learned counsel for Applicants to show the record that they had applied to Village Panchayat for permission to make construction. There is no such record. The learned counsel for Applicants submitted that under Nirmal Bharat Abhiyan, the Applicants had obtained subsidy and then they had built the toilet. Only because the construction is made under Government scheme, it cannot be said that there was no necessity to obtain the permission of local body. Further, there is allegations of the revenue office that the construction was made on public way. Village Panchayat is also against the present Applicants. In view of these circumstances, it cannot be said that there is nothing against the Applicants. There are statements of witnesses in respect of the aforesaid incident.

5 During arguments, the learned counsel for Applicants submits that Applicant Nos.7 and 8 were minor at the relevant time

and Applicant Nos.13 to 16 are unmarried daughters of other Applicant and this circumstance needs to be considered. He submitted that there is possibility that elder members had gone towards the office and their children followed them, but the children had no intention to create obstruction as described in Section 353 of the Indian Penal Code. There is force in this submission. It can be said that it was the activity of adult persons and children accompanied them. This Court holds that relief needs to be granted to Applicant Nos.7, 8 and 13 to 16. No such relief can be given to other Applicants. In the result, the following order is passed:

ORDER

- I. The application of Applicant Nos.7, 8 and 13 to 16 is allowed. Relief is granted to them in terms of prayer clause (A).
- II. The application of remaining Applicants stands rejected.
- III. Rule is made absolute in those terms.

[SMT. VIBHA KANKANWADI, J.]

[T. V. NALAWADE, J.]